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Jack Rosenow
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3328 South 334th Street
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Re: *Bremerton v. Sesko* Mediation

Dear Mr. Rosenow:

FOR SETTLEMENT PURPOSES ONLY – ER 408

Thank you for agreeing to be our mediator. I have shared this letter with Alan Middleton, the Seskos' attorney.

Summary

The City of Bremerton and the Seskos have a long, complex, and unfortunate history. Mr. Sesko was an inventor of some note. He used several properties in the City to collect vehicles, machinery and other materials. He used the collections on these sites to pursue his trade. These sites came to resemble junkyards. This violated the City code and was a nuisance. Neighbors complained. The City enforced its ordinances seeking abatements of the nuisances in Superior Court, and through administrative procedures. The vast majority of issues were resolved in the City's favor. Appeals by the Seskos were unsuccessful. The nuisances were abated. The properties were cleaned up by the City's contractors. After losing at every level of state court, the Seskos sued the City in federal court alleging violations of their civil rights.

Currently, there are five distinct cases between the Seskos and the City at the hearing examiner, state or federal court level. The parties have agreed to mediate the issues related to the Sesko properties on Arsenal Way and Pennsylvania Avenue. This includes the federal lawsuit and two state court matters. The other cases are discussed briefly in order to give a full picture of the current relationship between the City and the Seskos. We do not expect to resolve them.

The Arsenal Way and Pennsylvania Properties:

> The following statement of facts is taken from *City of Bremerton v. Sesko*[1]:
> The Seskos own properties at 3536 Arsenal Way and at 1701 Pennsylvania Avenue, both in Bremerton, Washington. The Pennsylvania Avenue property is located within 200 feet of the shoreline. After receiving complaints from neighboring property owners about old vehicles and piles of junk on these properties, the City investigated. According to the trial court's findings, the Arsenal Way property is covered with vehicles, heavy equipment, litter, vending machines, portable toilets, appliances, lumber scraps, metal scraps, vehicle parts, boats, metal tanks, wooden pallets, paint cans, litter debris and various other objects which are not associated with residential use of the property. . . . A different trial court judge found that the Pennsylvania Avenue property was covered with old dilapidated vehicles, including boats, buses, and cars, tires, rusty tanks, rusty machine parts, junk piers, wooden pallets, concrete chunks, modular buildings, metal debris, storage tanks, old signs, the building on sled runners, old boats, a rusty barge, storage tanks, pontoons, a rusty breakwater float, mattresses, styrofoam floats, portable buildings, a crane, rusty metal objects, metal scraps, and wood scraps. . . . The City determined that the Seskos were operating junkyards on their properties, contrary to the City zoning code. Thus, it issued cease and desist orders. The Seskos appealed to the City Planning Commission, contending that the properties were storage yards, not junkyards, and that William Sesko used some of the items for a research and development business. They also argued that they engaged in this use before the City annexed the property in 1990 and it was a legal non-conforming use. The Planning Commission upheld the City's orders, and the City Council rejected the Seskos' attempt to appeal the Arsenal Way decision.
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> Thereafter, the City posted an order to vacate on the property. When the Seskos did not comply, the City filed suit, seeking an order of abatement and permanent injunction. The trial court initially applied the doctrine of collateral estoppel in finding the Arsenal Way property to be a nuisance under RCW 7.48.120. It entered summary judgment in favor of the City on that issue and proceeded to trial to determine the extent of the nuisance and the proper remedy. Following trial, the court entered findings and conclusions and judgment granting injunctive relief.
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> The Seskos appealed the Pennsylvania Avenue cease and desist order to the City Council, which affirmed it, and then to the superior court, which later dismissed their petition for want of prosecution. Again, when the Seskos failed to comply

[1] 100 Wash.App. 158, 164, 995 P.2d 1257 (2000). Footnotes deleted.

with the order, the City filed suit seeking to abate the nuisance and to enjoin the Seskos.

The court trying the Pennsylvania Avenue property case also relied upon the doctrine of collateral estoppel to preclude the relitigation of whether the property was being used as a junkyard. Following trial, the court granted the requested relief.

The Court of Appeals affirmed both trial court decisions. The City then began a long process of abatement.

The Abatement of Pennsylvania Avenue

The Seskos did not comply with the trial court's abatement order. With permission from the trial court, the City hired a contractor. The contractor began the abatement in January 2002.

During the abatement, the City's project manager watched the Seskos move objects from their property to a neighboring lot.

After the contractor left, the Seskos moved objects back onto the site. These included junk cars, trucks, boats, a garage structure on the back of a truck, a moving van, big Styrofoam pieces, floating docks, concrete docks, heavy army equipment, tires, and airplane stairs.

Because the Seskos continued to defy the injunction, the City brought another motion to enforce the order. The court held a hearing. The Seskos contended that the objects on the property were for their business. And therefore those objects are not junk.

The court again authorized the City to enter the Sesko property to obtain compliance with the May 8, 1998 order.

After the order was issued the City's contractor again went on the property and re-did the abatement. The Seskos appealed these post-judgment orders. The orders were affirmed by the Court of Appeals. The Supreme Court denied review.

The Abatement of Arsenal Way

The abatement of the Arsenal Way property was a much larger task. The amount of materials on this property was greater than Pennsylvania Avenue.

The original trial court judgment provided for a mandatory injunction requiring abatement of the nuisance. It directed the Seskos to remove "litter, vehicles, vending machines, portable toilets, appliances, lumber scraps, vehicles, heavy equipment and all other objects by April 20, 1998" and specified that all vehicles and objects must be removed except those objects and vehicles "associated with residential use of the property."

Between January 1998 and December 2000, the Seskos took no action to comply with the judgment. On December 15, 2000, the City sought permission to send City contractors to the property to do the nuisance abatement work. The judgment authorized the City to enter the Seskos' property and abate the nuisance if the Seskos failed to comply with it.

The City of Bremerton continued to urge the Seskos to do the abatement work to avoid the expense of hiring City contractors. On September 14, 2001, the City sent the Seskos a letter explaining that if they failed to do the abatement work by late November that year, the City of Bremerton would be forced to send contractors onto their property to do the work. The letter contained an inventory of goods which the Seskos were required to remove from their property. Because the judgment allowed the Seskos to retain residential vehicles and objects, the City also asked the Seskos to identify residential goods and vehicles.

The City asked the Seskos to tag the goods they used outside their residence. Or, in the alternative, they were asked to identify residential goods so a photographic record could be made. The Seskos contended they did not understand the requirement and could not comply with the City's request. Because the Seskos refused to identify residential objects and vehicles in their yard, the City noted a motion to clarify how the requirement regarding retention of residential goods on the property should be implemented by the City contractor.

The court required the Seskos to place residential goods within a 15-foot perimeter area around their house, and to label residential goods outside the perimeter area. The order allowed the Seskos to keep six residential vehicles on that property. The Seskos proceeded to label over 157 objects and vehicles which they contended were utilized in conjunction with outdoor residential property use, including over twenty cars, trucks, motorcycles, five buses, one steamroller, various commercial trucks with beds full of other objects, a scissor lift, a D-8 tractor, a loader, a grader, ten dumpsters full of objects, a Hobart welder, thirteen boats and trailers, a tugboat, eleven other trailers, two bathtubs, more than six metal storage units, a large quantity of ammunition boxes, scaffolding, four sets of floats for docks, seven wooden docks, two sets of portable metal airplanes stairs, three pallets of insulated building panels, four pallets of steel forms, two travel trailers, two campers, other residential vehicles and other heavy equipment and materials. They piled many non-residential goods within the 15-foot perimeter area around their house.

At the next hearing the Seskos admitted they refused to comply with all of the trial court's prior orders. Mr. Sesko conceded that they had not placed residential objects in the perimeter as directed by court order:

> What we did around the house, we just—the house, is going to take a while to sort through that stuff. We did not even ascertain everything around the house was residential. What we did was just try to get it out of the way, and so we

> actually made a mess around the house, stacked everything conveniently up against the house to get within that [15-foot perimeter area].

After the Seskos labeled the above items characterizing them as residential goods, City officials, concerned that the Seskos were abusing the residential goods exemption to the abatement action, filed a motion to require that the residential goods retained in exterior areas of the Sesko property be limited to those goods typically associated with outdoor residential property use. This clarification would not have been necessary, but for the Seskos disingenuous assertion that, for example, a scissor lift, was "residential."

With Mr. Sesko's agreement, the Court ordered the six vehicle limitation. The court also identified various residential items which could be retained on the property and specified that all other vehicles and heavy equipment had to be removed from the property. The order allowed the Seskos to keep only the following residential goods on their property within the 15-foot buffer area around their home:

> "One metal tent frame, one pair of skis, one broom, one hose, one shovel, one rake, two wheelbarrows, two barbeques, two extension ladders, large metal fan, yellow stepstool, one garbage can, one trashcan, two boats, metal stairs necessary to be used in conjunction with two boats kept on the property, firewood stored in three Quonset Huts, one travel trailer or camper, two clothes lines, a dumpster and four lawnmowers, pile of firewood logs, two canoes, one garden cart, one concrete mixing pan, one outdoor vacuum, two mailboxes.

The later order clarified the order with respect to the six residential vehicles and specified that the Seskos must store the vehicles on the driveway of their property, and that the six vehicles could include "a functional bus, motorcycles, cars or trucks."

Had the Seskos done the abatement work themselves as they had been ordered by the court, they could have retained all objects which they stored in the yard of their property had they legally stored them elsewhere. There would have been no debate about the residential goods exemption of the trial court judgment. They simply refused to comply with the trial court's judgment.

The Seskos appealed these post-judgment orders. The orders were affirmed by the Court of Appeals. And the City's contractor went onto the Seskos' property and performed the abatement work.

Both judgments allow the City to recover its costs of abatement. The City's Project Manager, Parametrix, documented the abatement process on both sites through daily reports and photographs. The City has brought a motion to recover the costs of the Arsenal Way abatement. It is scheduled to be heard on October 22, 2004. After that motion is heard the City will bring a

similar motion related to Pennsylvania Avenue. We have provided the Seskos with records that support the City's claims. The total owing on Arsenal Way is **$216,639.77**. The total on Pennsylvania is **$96,749.32**. These amounts reflect costs actually incurred by the City in abating these nuisances.

The Federal Lawsuit

The Seskos civil rights complaint sets out the above facts and brings causes of action based on 42 USC 1983, negligence unlawful abatement, damage to land and property, conversion and takings law. The City sees no risk in defending these lawsuits.

First, the Rooker-Feldman doctrine prevents a federal court from asserting jurisdiction over a controversy that has been decided by a state court. Here, the propriety of the abatements on the Arsenal Way and Pennsylvania Avenue properties has been decided by Washington courts. The Seskos have exhausted or abandoned their state court remedies in this case.

Second, for similar reasons as above, collateral estoppel bars the Seskos from re-litigating these issues.

Third, the statute of limitations for the Seskos claims were triggered when the City made the operative decision to abate the nuisance.

And finally, let's assume the Seskos get the federal court to re-litigate these cases. The City has prevailed on every major factual and legal issue raised in these cases. There is a solid factual record that supports the City's claims.

Barnes and Cottman

When the City was abating the nuisance on Arsenal Way, the Seskos moved several boats and cars to another property in the City located at Barnes and Cottman. The City used its hearing examiner process to enforce this violation of the zoning code. The Hearing Examiner ordered abatement, but suspended the bulk of the fines contingent on the Seskos complying with the order. They did not. And they still have not. Because of the continuing violation, the fines in that case now exceed $30,000.00. We do not expect to resolve this issue at mediation.

Recent Developments

The court order allowed the Seskos to have six vehicles on the Arsenal Way property. An inspection September 14, 2004, showed at least 17 cars and trucks, as well as a bus. The order also allowed the Seskos to keep two boats. The inspection showed six boats, two of which were previously on the Barnes and Cottman property. The boats were originally on the Arsenal Way property, but were moved to Barnes and Cottman to avoid having them removed by the

contractor during the cleanup. The inspection was done from the right-of-way. There could be more vehicles or other material stored on the property that are not visible from the road.

The same day, on the Pennsylvania site, the inspector saw the Drott excavator. The order prohibits anything from being stored on this site. The Drott was moved during the abatement to avoid having the contractor take it.

Werner Road Litigation

In 1995 the City abated a nuisance on some lots owned by the Seskos. The City recorded a lien for $18,707.20 for the costs of this abatement. The Seskos sold the property and the lien was satisfied. In 1996 the Seskos sued to recover the amount of the lien. The case was originally dismissed. In 1999 the Court of Appeals reversed, and remanded the case to the trial court. To date, the Seskos have not set this matter for trial or arbitration. We do not expect to resolve this case at mediation.

City's Position

The City seeks 1) recovery of its hard costs in abating the nuisances; 2) dismissal of the Seskos' federal lawsuit; and 3) finality and closure. We look forward to a productive mediation.

Very truly yours,

David P. Horton
Assistant City Attorney

cc: Janet Lunceford